

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

NICOLE F. MYERS,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	Civil Action H-07-0409
	§	
MOTHERS WORK, INC.,	§	
<i>Defendant.</i>	§	

**ORDER**

This employment discrimination suit is before the court on defendant's expedited motion for an extension of time to designate its experts (Dkt. 20).<sup>1</sup> Defendant's motion is based on its contentions that plaintiff has not provided medical authorizations or cooperated in scheduling her deposition, and that such discovery is necessary before defendant can designate its experts.<sup>2</sup>

Plaintiff identified through initial disclosures, answers to interrogatories, and her designation of experts all of her expert witnesses.<sup>3</sup> Plaintiff previously provided defendant medical releases for at least two treating physicians designated as experts prior to filing suit, although defendant never requested records from those physicians. Plaintiff objected to defendant's medical authorizations on June 8, 2007, and it does not appear that defendant has

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<sup>1</sup> Defendant's expert designations are currently due on September 4, 2007.

<sup>2</sup> Defendant's motion to compel executed medical authorizations and plaintiff's deposition (Dkt. 19) is pending.

<sup>3</sup> Plaintiff timely designated her experts on August 1, 2007. Plaintiff's expert reports are due October 1, 2007.

attempted to reach a compromise on the scope of authorization for release of plaintiff's medical records since that date.

Because the discovery cut-off date is May 1, 2008, the scheduling order in place clearly contemplates that expert designations will occur early in the discovery process. Defendant has no legitimate need to extend the deadline for *designating* its experts until after it has completed discovery of plaintiff's medical records and taken her deposition.<sup>4</sup> If the necessary discovery has not been completed by the November 5 expert report submission date, and the parties are unable to agree to an extension, the court will then consider a motion to allow an extended deadline or a supplemental report. It is therefore

ORDERED that defendant's expedited motion for an extension of time to designate experts until November 5, 2007 (Dkt. 20) is denied. It is further

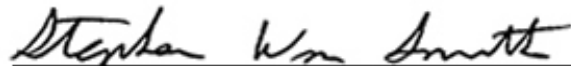
ORDERED that the motion to compel (Dkt. 19) is stricken for lack of compliance with the good faith conference obligations imposed by Federal Rule of Civil Procedure 37 and Local Rule 7.1(D). Counsel are expected to certify that they have conferred in a good faith effort to prevent the necessity of filing the motion, not merely recite the history of an on-going dispute. The correspondence and e-mail communication attached to this motion do not reflect adequate efforts to schedule the plaintiff's deposition at a *mutually agreeable* place and time. Nor has there been sufficient effort to *negotiate* acceptable terms for a medical records authorization.

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<sup>4</sup> Plaintiff represents that she did in fact appear for her deposition noticed for June 27, 2007 at defense counsel's offices, but defendant did not appear to conduct the deposition.

Counsel for the parties are directed to confer either in person or by telephone in a good faith effort to resolve these disagreements before seeking court intervention in such routine discovery matters.

Signed at Houston, Texas on August 28, 2007.

  
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Stephen Wm Smith  
United States Magistrate Judge